

AMENDED IN ASSEMBLY AUGUST 15, 2002

AMENDED IN ASSEMBLY AUGUST 12, 2002

AMENDED IN SENATE APRIL 16, 2001

**SENATE BILL**

**No. 1078**

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**Introduced by Senator ~~Battin~~ Sher**

**(~~Coauthors: Senators Chesbro, Haynes, and Monteith~~)**

**(~~Coauthors: Assembly Members Hollingsworth and Strom Martin~~)**

**(~~Coauthor: Senator Bowen~~)**

February 23, 2001

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~~An act relating to state government.~~ *An act to amend Sections 383.5 and 390 of, to add Sections 333, 387, and 399.25 to, and to add Article 16 (commencing with Section 399.11 to Chapter 2.3 of Part 1 of Division 1 of, the Public Utilities Code, relating to renewable energy.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1078, as amended, ~~Battin~~ Sher. ~~State government~~ *Renewable energy: California Renewables Portfolio Standard Program.*

*(1) Under the Public Utilities Act, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations, and authorizes the commission to establish just and reasonable rates and charges. The act requires retail suppliers of electric services to disclose sources of electrical generation and requires that those retail suppliers report information to the State Energy Resources Conservation and Development Commission (Energy Commission).*

*This bill would establish the California Renewables Portfolio Standard Program. The program would require that a retail seller of electricity, including electrical corporations, community choice*

aggregators, local publicly owned electric utilities and electric service providers, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard).

The bill would require the PUC to implement the renewables portfolio standard for electrical corporations. Each electrical corporation would be required to increase its total procurement of eligible renewable energy resources by at least 1% per year so that at least 20% of its retail sales are procured from eligible renewable energy resources by December 31, 2015. If an electrical corporation fails to procure sufficient eligible renewable energy resources in a given year to meet an annual target, the electrical corporation would be required to procure additional eligible renewable resources in subsequent years to compensate for the shortfall. An electrical corporation with at least 20% of retail sales procured from eligible renewable energy resources in any year would not be required to increase its procurement in the following year.

This bill would require the PUC to direct electrical corporations to prepare within 90 days of being deemed creditworthy, and to annually update, renewable energy procurement plans that are sufficient to satisfy at least 5 years of obligations under the California Renewables Portfolio Standard Program, with the goal of procuring the least-cost and best-fit eligible renewable energy resources. The PUC would be required to adopt rules for electrical corporations establishing a process for determining market prices of electricity from renewable generators pursuant to specified criteria, a process for rank ordering and selection of least-cost and best-fit renewable resources to fulfill program obligations, flexible rules for compliance that permit electrical corporations to apply excess or inadequate procurement in one year to the following 3 years, and standard terms and conditions to be used by electrical corporations in contracting with renewable electricity generators. The PUC would be required to review and accept, modify, or reject each electrical corporation's renewable procurement plan 90 days prior to the commencement of renewable procurement by the electrical corporation. The PUC would be required to review and accept, modify, or reject renewable solicitations by electrical corporations and proposed contracts by electrical corporations with renewable electricity generators. The PUC would be required to allow an electrical corporation to recover, in rates,



*electricity procurement and administrative costs reasonably incurred consistent with a renewable energy procurement plan approved by the PUC.*

*Because a violation of the Public Utilities Act or an order of the PUC is a crime under existing law, the bill would impose a state-mandated local program by creating a new crime.*

*The bill would require the Energy Commission to certify eligible renewable energy resources, to design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, to allocate and award supplemental energy payments, pursuant to provisions discussed below, to eligible renewable energy resources in order to reduce the cost of compliance with the portfolio standard by retail sellers, to consult with the PUC prior to establishing rules for compliance by retail sellers other than electrical corporations, to consult with the PUC prior to establishing rules for the awarding of supplemental energy payments, and to assess and collect penalties sufficient to ensure compliance, on any retail seller that is not an electrical corporation, that fails to meet its renewables portfolio standard. If supplemental energy payments are insufficient to cover above-market renewable procurement costs, the Energy Commission would be required to allow retail sellers other than electrical corporations to limit their annual procurement obligations to the quantity of eligible renewable energy resources that can be procured with available supplemental energy payments. The bill would require that the Energy Commission enforce and monitor compliance with the renewable portfolio standards by retail sellers other than electrical corporations and local publicly owned electric utilities.*

*(2) Under the Public Utilities Act, the PUC requires electrical corporations to identify a separate rate component to fund cost-effective energy efficiency and conservation activities, public interest research and development, and development of renewable resources technology. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. Existing law requires specified electrical corporations to collect specific amounts to support each of these programs. Existing law also requires the Energy Commission to develop, implement, and administer the Public Interest Research, Development, and Demonstration Program. Existing law requires the program to consist of a balanced portfolio that addresses California's energy and environmental needs, technology opportunities, and system reliability. Existing law, until January 1,*



2000, required the Energy Commission to adopt regulations to ensure the success of electricity industry restructuring in the transition to a new market structure and to implement the program. Existing law authorizes the Energy Commission to solicit applications for awards, using a sealed competitive bid, competitive negotiation process, multiparty agreement, single source, or sole source method.

Existing law requires 45% of the money collected for the program be used for in-state operation and development of existing and new and emerging renewable resources technologies, up to \$243,000,000, to be used for programs that are designed to improve the competitiveness of existing in-state renewable electricity generation technology facilities. Existing law requires 30% of the money collected for in-state operation and development of existing and new and emerging renewable resources technologies, up to \$162,000,000, to be used for programs that are designed to foster the development of new in-state renewable electricity generation technology facilities. Existing law requires 10% of the money collected for in-state operation and development of existing and new and emerging renewable resources technologies, up to \$54,000,000, to be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications. Existing law requires 15% of the money collected for in-state operation and development of existing and new and emerging renewable resources technologies, up to \$81,000,000, to be used for programs designed to provide customer credits for purchases of renewable energy produced by certified energy providers, to disseminate information regarding renewable energy technologies, to promote purchases of renewable energy, to help develop a consumer market for renewable energy, and to help develop a consumer market for renewable energy technologies.

This bill would restate the goal of the program to be, to increase the amount of renewable electricity generated per year, so that it equals at least 17% of the total electricity generated for consumption in California by 2006. This bill would instead require 20% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company, the Southern California Edison Company, and the Pacific Gas and Electric Company, to be used for programs that are designed to improve the competitiveness of specified eligible existing in-state renewable electricity generation facilities. The bill would instead require 50.5%



*of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company, the Southern California Edison Company, and the Pacific Gas and Electric Company, to be used for supplemental energy payments to projects selected by retail sellers to fulfill their obligations under the California Renewables Portfolio Standard Program, pursuant to specified criteria and procedures. The bill would instead require 17.5% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company, the Southern California Edison Company, and the Pacific Gas and Electric Company, to be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications and would authorize the Energy Commission, in awarding funding, to provide preference to systems that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations. The bill would instead require 10% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company, the Southern California Edison Company, and the Pacific Gas and Electric Company, to be used to provide customer credits to customers that entered into direct transactions on or before September 20, 2001, for purchases of electricity produced by in-state renewable electricity generation facilities. The bill would require the Energy Commission to report to the Governor and Legislature by March 31, 2003, on how to most effectively utilize the funds for customer credits. The bill would require 1% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company and the Pacific Gas and Electric Company, to be used to promote renewable energy and to disseminate information on renewable energy technologies, and to help develop a consumer market for renewable energy and for small-scale emerging renewable energy technologies. The bill would authorize the Energy Commission to expend up to 1% of the funds collected for any of its costs in implementing and administering the California Renewables Portfolio Standard Program.*



(3) Existing law, the Warren-Alquist State Energy Resources Conservation and Development Act, requires the Energy Commission to certify sufficient sites and related facilities that are required to provide a supply of electricity sufficient to accommodate projected demand for power statewide. Under existing law, the PUC must grant a certificate of public convenience and necessity, upon application by a public utility, for the construction of a new transmission facility or electric transmission line within the state. As a basis for granting a certificate of public convenience and necessity, the PUC is required to give consideration to community values, recreational and park areas, historical and aesthetic values, and influence on the environment. No certificate of public convenience and necessity may be granted for an electrical transmission line without certification by the Energy Commission, and the decision by the Energy Commission is conclusive as to all matters determined thereby and take the place of consideration by the PUC.

This bill would provide that an application of an electrical corporation for a certificate for the construction of new transmission facilities, that are necessary to facilitate achievement of the renewable power goals, shall be deemed to be necessary by the PUC in determining to issue a certificate of public necessity and convenience. The bill would require the PUC to take all feasible actions to ensure that the transmission rates established by the Federal Energy Regulatory Commission do not discriminate against a renewable generator.

(4) Existing law requires each local publicly owned utility to establish a nonbypassable usage based charge to fund investments in specified public purpose programs, including cost-effective demand-side management services to promote energy efficiency and energy conservation, investment in renewable energy resources and technologies, and services for low-income electricity consumers. The charge is required to be not less than the lowest expenditure of the 3 largest electrical corporations in California based on a percentage of revenue.

This bill would require the governing board of a local publicly owned electric utility to be responsible for implementing and enforcing a renewables portfolio standard consistent with the California Renewables Portfolio Standard Program and to annually report to the Energy Commission upon expenditures of public goods funds on public purpose programs, thereby imposing a state-mandated local program.





*Because a violation of this provision would be a crime, this bill would also impose a state-mandated local program by creating a new crime.*

*(5) Existing law provides that subject to applicable contractual terms, energy prices paid to nonutility power generators by a public utility electrical corporation based on the commission's 'short run avoided cost energy methodology' are required to be determined by specified law.*

*This bill would authorize any nonutility power generator using renewable fuels that entered into a contract with an electrical corporation specifying fixed energy prices for output prior to December 31, 2001, to elect an additional 5 years of fixed energy payments at a level to be determined by the PUC.*

*(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.*

*This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.*

*With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.*

~~*This bill would declare that it is the intent of the Legislature to provide adequate funding for the operation of state government.*~~

*Vote: majority. Appropriation: no. Fiscal committee: no yes. State-mandated local program: no yes.*

*The people of the State of California do enact as follows:*

~~*SECTION 1. It is the intent of the Legislature to provide adequate funding for the operation of state government.*~~

*SECTION 1. Section 333 is added to the Public Utilities Code, to read:*

*333. (a) The commission shall direct each electrical corporation to prepare renewable energy procurement plans as described in paragraph (3) to satisfy at least five years of obligations under the California Renewables Portfolio Standard*

1 *Program as established in Article 16 (commencing with Section*  
2 *399.11). To the extent feasible, this procurement plan shall be*  
3 *proposed, reviewed, and adopted by the commission as part of, and*  
4 *pursuant to, a general procurement plan process. Consistent with*  
5 *the goal of procuring the least-cost and best-fit eligible renewable*  
6 *energy resources, each electrical corporation shall file an initial*  
7 *renewable energy procurement plan with the commission prior to*  
8 *resuming general procurement responsibilities. The commission*  
9 *shall require each electrical corporation to update its renewable*  
10 *energy procurement plan on an annual basis.*

11 *(1) The commission shall not require an electrical corporation*  
12 *to conduct procurement to fulfill the California Renewables*  
13 *Portfolio Standard Program until it is deemed creditworthy by the*  
14 *commission upon it having attained an investment grade rating as*  
15 *determined by at least two major rating agencies. Within 90 days*  
16 *of being deemed creditworthy, an electrical corporation shall*  
17 *conduct solicitations to implement a renewable energy*  
18 *procurement plan. An electrical corporation that is creditworthy*  
19 *as of January 1, 2003, shall conduct solicitations to implement a*  
20 *renewable energy procurement plan pursuant to this section and*  
21 *the requirements of Article 16 (commencing with Section 399.11).*

22 *(2) The commission shall adopt, by rule, for all electrical*  
23 *corporations, all of the following:*

24 *(A) A process for determining market prices pursuant to*  
25 *subdivision (c) of section 399.15. The commission shall make*  
26 *specific determinations of market prices after the closing date of*  
27 *a competitive solicitation conducted by an electrical corporation*  
28 *for eligible renewable energy resources. The electrical*  
29 *corporation shall not transmit or share the results of any*  
30 *competitive solicitation for eligible renewable energy resources*  
31 *until the commission has established market prices pursuant to*  
32 *subdivision (c) of Section 399.15.*

33 *(B) A process that provides criteria for the rank ordering and*  
34 *selection of least-cost and best-fit renewable resources to comply*  
35 *with the annual California Renewables Portfolio Standard*  
36 *Program obligations on a total cost basis. This process shall*  
37 *consider estimates of indirect costs associated with needed*  
38 *transmission investments and ongoing utility expenses resulting*  
39 *from integrating and operating eligible renewable energy*  
40 *resources.*



1 (C) Flexible rules for compliance including, but not limited to,  
2 permitting electrical corporations to apply excess or inadequate  
3 procurement in one year to no more than the following three years.

4 (D) Standard terms and conditions to be used by all electrical  
5 corporations in contracting for eligible renewable energy  
6 resources, including performance requirements for renewable  
7 generators.

8 (3) Consistent with the goal of procuring the least-cost and  
9 best-fit eligible renewable energy resources, the renewable energy  
10 procurement plan submitted by an electrical corporation shall  
11 include, but is not limited to, all of the following:

12 (A) An assessment of annual or multiyear portfolio supplies  
13 and demand to determine the optimal mix of renewable generation  
14 resources with deliverability characteristics that may include  
15 peaking, dispatchable, baseload, firm, and as-available capacity.

16 (B) Provisions for employing available compliance flexibility  
17 mechanisms established by the commission.

18 (C) A bid solicitation setting forth the need for renewable  
19 generation of each deliverability characteristic, required on-line  
20 dates, locational preferences if any, and market price for each  
21 renewable energy product. Payments may be structured to include  
22 both capacity and energy components.

23 (4) In soliciting and procuring eligible renewable energy  
24 resources, each electrical corporation shall offer contracts of no  
25 less than 10 years in duration, unless the commission approves of  
26 a contract of shorter duration.

27 (5) In soliciting and procuring eligible renewable energy  
28 resources, each electrical corporation may give preference to  
29 projects that provide tangible demonstrable benefits to  
30 communities with a plurality of minority or low-income  
31 populations.

32 (b) The commission shall review and accept, modify, or reject  
33 each electrical corporation's renewable procurement plan 90 days  
34 prior to the commencement of renewable procurement by the  
35 electrical corporation. The commission shall ensure that, if the  
36 electrical corporation submits a procurement plan within the  
37 required time period, the electrical corporation will be able to  
38 procure sufficient renewable resources to comply with the terms  
39 and goals of the California Renewables Portfolio Standard  
40 Program.

1 (c) The commission shall review the results of a renewable  
2 energy resources solicitation submitted for approval by an  
3 electrical corporation and accept or reject proposed contracts  
4 with eligible renewable energy resources based on consistency  
5 with the approved renewable procurement plan. If the commission  
6 determines that the bid prices are elevated due to a lack of effective  
7 competition amongst the bidders, the commission shall direct the  
8 electrical corporation to renegotiate such contracts or conduct a  
9 new solicitation.

10 (d) If an electrical corporation fails to comply with a  
11 commission order adopting a renewable procurement plan, the  
12 commission shall exercise its authority pursuant to Section 2113  
13 to require compliance.

14 (e) Upon application by an electrical corporation, the  
15 commission may authorize another entity to enter into contracts on  
16 behalf of customers of the electrical corporation for deliveries of  
17 eligible renewable energy resources to satisfy the annual portfolio  
18 standard obligations. The commission shall allow the procurement  
19 entity to recover reasonable costs through retail rates subject to  
20 review and approval.

21 (f) The commission shall allow an electrical corporation to  
22 recover, in rates, procurement and administrative costs reasonably  
23 incurred pursuant to the California Renewables Portfolio  
24 Standard Program, if the electrical corporation incurred the costs  
25 consistent with a renewable energy procurement plan approved by  
26 the commission.

27 SEC. 2. Section 383.5 of the Public Utilities Code is amended  
28 to read:

29 383.5. (a) It is the intent of the Legislature in establishing the  
30 Renewable Energy Program, to increase the amount of renewable  
31 electricity generated per year, so that it equals at least 17 percent  
32 of the total electricity generated for consumption in California per  
33 year by 2006.

34 (b) As used in this section, the following terms have the  
35 following meaning:

36 (1) "In-state renewable electricity generation technology"  
37 means ~~biomass, solar thermal, photovoltaic, wind, geothermal,~~  
38 ~~small hydropower of 30 megawatts or less, waste tire, digester gas,~~  
39 ~~landfill gas, and municipal solid waste generation technologies, as~~  
40 ~~described in the report, defined in paragraph (2), including any~~

~~additions or enhancements thereto, that are produced in facilities located in this state and placed in operation after September 26, 1996, or that were operational prior to that date, and that are also certified under Section 292.2904 of Title 18 of the Code of Federal Regulations as a qualifying small power production facility either located in California, or that began selling electricity to a California electrical corporation prior to September 26, 1996, under a Standard Offer Power Purchase Agreement authorized by the commission~~ a facility using biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation facility of 30 megawatts or less, digester gas, and landfill gas generation technologies, as described in the report, defined in paragraph (2), including any additions or enhancements thereto, that are located in this state or located near the border of this state and with the first point of connection to the Western Systems Coordinating Council (WSCC) transmission system located within this state. “In-state renewable electricity generation facility” also includes a facility using ocean thermal, tidal current, and wave energy generation technologies, located within the state’s territorial boundaries.

(2) “Report” means the ~~Policy Report on AB 1890 Renewables Funding (March 1997, Publication Number P500-97-002) submitted to the Legislature by the State Energy Resources Conservation and Development Commission report entitled “Investing in Renewable Electricity Generation in California” (June 2001, Publication Number P500-00-022) submitted to the Governor and the Legislature by the State Energy Resources Conservation and Development Commission (Energy Commission).~~

~~(b) (1) Forty-five percent of the money~~

(c) (1) Twenty percent of the funds collected pursuant to paragraph (3) of subdivision (c) of Section 381, ~~up to two hundred forty-three million dollars (\$243,000,000);~~ shall be used for programs that are designed to improve the competitiveness of existing in-state renewable electricity generation technology facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide. *Eligibility for incentives under this subdivision shall be limited to those technologies found eligible for funds by the*

1 *Energy Commission pursuant to paragraphs (5), (6), and (8) of*  
2 *subdivision (c) of Section 399.6.*

3 (2) Any funds used to support in-state renewable electricity  
4 generation ~~technology~~ facilities pursuant to this subdivision shall  
5 be expended in accordance with ~~the provisions of the report,~~  
6 subject to all of the following requirements:

7 (A) ~~Funding for existing renewable electricity generation~~  
8 ~~technologies shall be grouped into three technology tiers, as~~  
9 ~~follows:~~

10 (i) ~~Twenty-five percent of the money, up to one hundred~~  
11 ~~thirty-five million dollars (\$135,000,000), shall be used to fund~~  
12 ~~first tier technologies, including biomass, solar thermal, and whole~~  
13 ~~waste tire technologies.~~

14 (ii) ~~Thirteen percent of the money, up to seventy million two~~  
15 ~~hundred thousand dollars (\$70,200,000), shall be used to fund~~  
16 ~~second tier wind technologies.~~

17 (iii) ~~Seven percent of the money, up to thirty-seven million~~  
18 ~~eight hundred thousand dollars (\$37,800,000), shall be used to~~  
19 ~~fund third tier technologies, including geothermal, small~~  
20 ~~hydropower, digester gas, landfill gas, and municipal solid waste~~  
21 ~~technologies.~~

22 (B) ~~Of the funding for existing renewable electricity~~  
23 ~~generation facilities available pursuant to this subdivision, 75~~  
24 ~~percent shall be used to fund first tier technologies, including~~  
25 ~~biomass and solar electric technologies and 25 percent shall be~~  
26 ~~used to fund second tier wind technologies.~~

27 (B) *The Energy Commission shall reexamine the tier structure*  
28 *as proposed in the report and adjust the structure to reflect market*  
29 *and contractual conditions. The Energy Commission shall also*  
30 *consider inflation when adjusting the structure.*

31 (C) ~~The State Energy Resources—Conservation—and~~  
32 ~~Development~~ Commission shall establish a cents per kilowatthour  
33 production incentive, not to exceed the payment caps per  
34 kilowatthour established in the report, *as those payment caps are*  
35 *revised in guidelines adopted by the commission,* representing the  
36 difference between target prices and the market clearing price for  
37 electricity, if sufficient funds are available. If there are insufficient  
38 funds in any payment period to pay either the difference between  
39 the target and market price or the payment caps, production  
40 incentives shall be based on the amount determined by dividing

1 available funds by eligible generation. ~~The target price for Tier 1~~  
 2 ~~technologies shall not be based on less than four cents (\$0.04) per~~  
 3 ~~kilowatthour. The market clearing price for electricity shall be the~~  
 4 ~~energy prices paid to nonutility power generators as provided in~~  
 5 ~~Section 390.~~

6 ~~(C) Funding for each type of existing in-state renewable~~  
 7 ~~electricity generation technology shall be reduced each year~~  
 8 ~~during the period from January 1, 1998, to January 1, 2002, to~~  
 9 ~~encourage the development of increasingly competitive~~  
 10 ~~technologies. The market price for electricity shall be determined~~  
 11 ~~by the Energy Commission based on the energy prices paid to~~  
 12 ~~nonutility power generators as authorized by the Energy~~  
 13 ~~Commission, or on otherwise available measures of market price.~~  
 14 ~~For the first tier technologies, the Energy Commission shall~~  
 15 ~~establish a time-differentiated incentive structure that encourages~~  
 16 ~~plants to run the maximum feasible amount of time and that~~  
 17 ~~provides a higher incentive when the plants are receiving the~~  
 18 ~~lowest price.~~

19 (D) Facilities that are eligible to receive funding pursuant to  
 20 this section subdivision shall be ~~certified~~ *registered* in accordance  
 21 with ~~the requirements set forth in the report and criteria developed~~  
 22 *by the Energy Commission and those facilities* may not receive  
 23 payments for any electricity produced that has any of the following  
 24 characteristics:

25 (i) ~~Is sold under a fixed energy price payment under a long-term~~  
 26 ~~contract with an existing in-state electrical corporation at monthly~~  
 27 ~~average rates equal to or greater than the applicable target price,~~  
 28 ~~as determined by the Energy Commission.~~

29 (ii) ~~Derives from a utility-owned facility that is receiving, or is~~  
 30 ~~eligible to receive, recovery of above-market facility costs through~~  
 31 ~~a competitive transition charge. Is that portion of electricity~~  
 32 ~~generation attributable to the use of qualified agricultural~~  
 33 ~~biomass fuel, for a facility that is receiving fuel-based incentives~~  
 34 ~~through the Agricultural Biomass-to-Energy Incentive Grant~~  
 35 ~~Program established pursuant to Part 3 (commencing with Section~~  
 36 ~~1101) of Division 1 of the Food and Agricultural Code.~~  
 37 *Notwithstanding subdivision (f) of Section 1104 of the Food and*  
 38 *Agricultural Code, facilities that receive funding from the*  
 39 *Agricultural Biomass-to-Energy Incentive Grant Program are*  
 40 *eligible to receive funding pursuant to this subdivision.*

(iii) Is used onsite; *or is* sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.

~~(e) (1) Thirty percent of the money, up to one hundred sixty-two million dollars (\$162,000,000);~~

~~(d) (1) Fifty-one and one-half percent of the funds collected pursuant to paragraph (3) of subdivision (c) of Section 381, shall be used for programs designed to foster the development of new in-state renewable electricity generation technology facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide. Funds to further the purposes of this subdivision may be committed for multiple years towards achieving the goals, to the extent possible, of the California Renewables Portfolio Standard Program established pursuant to Article 16 (commencing with Section 399.11).~~

(2) Any funds used for new in-state renewable electricity generation technology facilities pursuant to this subdivision shall be expended in accordance with the report, subject to all of the following requirements:

(A) ~~Funds shall be allocated for proposed projects based on a competitive solicitation process whereby production incentives, not to exceed one and one-half cents (\$0.015) per kilowatthour, are awarded to the lowest bidders, provided that not more than 25 percent of the funds allocated pursuant to paragraph (1) may be awarded to a single project.~~

~~(B) Funds expended for production incentives shall be paid over a five-year period commencing on the date that a project begins electricity production, provided that the project shall be operational prior to January 1, 2002, unless the State Energy Resources Conservation and Development Commission finds that the project will not be operational prior to January 1, 2002, due to circumstances beyond the control of the developer. Upon making this finding, the State Energy Resources Conservation and Development Commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond January 1, 2007.~~

~~(C) The amount of funds expended shall be increased for each successive year during the period from January 1, 1998, to January~~



~~1, 2002, as fewer projects are expected to be funded during the first few years after funding becomes available.~~

~~(D) All funds shall be awarded in the form of supplemental energy payments to projects selected by retail sellers to fulfill their obligations under the California Renewables Portfolio Standard Program pursuant to Article 16 (commencing with Section 399.11). The Energy Commission shall manage the funds in a manner that ensures the availability of supplemental energy payments to support the renewables portfolio standard established by Sections 399.14 and 399.15. Funds not required for this purpose may be allocated by the Energy Commission pursuant to the report.~~

(B) After reviewing the results of solicitations conducted by electrical corporations pursuant to Section 333, the Energy Commission shall do all of the following:

(i) Confirm that the facility has been selected by an electrical corporation, pursuant to a commission approved process, to supply electricity under a long-term contract.

(ii) Award supplemental energy payments to the facility for any above-market prices approved by the commission pursuant to Sections 333 and 399.15, subject to caps established by the Energy Commission. These caps shall be designed to provide for a viable renewable energy market capable of achieving the goals of Article 16 (commencing with Section 399.11). The Energy Commission may waive applicability of the caps to accommodate a facility if it is demonstrated, to the Energy Commission's satisfaction, that operation of the facility would provide substantial economic and environmental benefits to end use customers subject to the funding requirements of Section 381.

(iii) Supplemental energy payments shall be awarded for the lesser of 10 years or the duration of the contract with the electrical corporation, commencing on the date of operation. The Energy Commission may reduce or terminate the awards for projects that fail either to commence and maintain operations consistent with the contractual obligations to an electrical corporation or that fail to meet eligibility requirements, pursuant to subparagraph (G).

(C) After reviewing contracts between facilities and retail suppliers other than electrical corporations, the Energy Commission shall do the following:

1     (1) Confirm that the facility has been selected by a retail seller  
2     other than an electrical corporation to supply electricity under a  
3     long-term contract.

4     (2) Award supplemental energy payments to the facility based  
5     on any above-market costs calculated by the Energy Commission  
6     pursuant to the criteria established in Section 399.15.  
7     Supplemental payments shall only be awarded if there are  
8     reasonable above-market costs that have been reviewed and  
9     approved by the Energy Commission. The Energy Commission  
10    may reduce or terminate the awards for projects that fail to  
11    commence operations consistent with contractual obligations or  
12    program guidelines.

13    (D) The Energy Commission may determine as part of a  
14    solicitation, that a facility that does not meet the definition of  
15    “in-state renewable electricity generation facility” solely because  
16    it is located outside the state, is eligible for funding under this  
17    subdivision if it meets both of the following requirements:

18    (i) It is located so that it is or will be connected to the Western  
19    Systems Coordinating Council (WSCC) transmission system.

20    (ii) It is developed with guaranteed contracts to sell its  
21    generation to end use customers subject to the funding  
22    requirements of Section 381, or to marketers that provide this  
23    guarantee for resale of the generation, for a period of time at least  
24    equal to the amount of time it receives incentive payments under  
25    this subdivision.

26    (E) Facilities that are eligible to receive ~~payments from the~~  
27    ~~New Renewable Resources Account created pursuant to paragraph~~  
28    ~~(2) of subdivision (a) of Section 445 shall be certified as specified~~  
29    ~~in the report and funding pursuant to this subdivision shall be~~  
30    registered in accordance with criteria developed by the Energy  
31    Commission and those facilities may not receive payments for any  
32    electricity produced that has any of the following characteristics:

33    (i) Is sold under an existing long-term contract with an existing  
34    in-state electrical corporation if the contract includes fixed energy  
35    or capacity payments, *except for that electricity that satisfies*  
36    *subparagraph (C) of paragraph (1) of subdivision (c) of Section*  
37    *399.6.*

38    (ii) Is used onsite ~~and~~ or is sold to customers in a manner that  
39    excludes competitive transition charge payments, or is otherwise  
40    excluded from competitive transition charge payments.

(iii) Is produced by a facility that is owned by ~~customer-owned electricity generating systems~~ *an electrical corporation or a local publicly owned electric utility as defined in subdivision (d) of Section 9604.*

(iv) *Is a hydroelectric generation project that will require a new or increased diversion, as defined in Section 5100 of the Water Code.*

~~(E)~~

(F) Eligibility to compete for funds or to receive funds shall ~~not be contingent upon the location or nature of the power purchaser~~ *be contingent upon having to sell the output of the renewable electricity generation facility to customers subject to the funding requirements of Section 381.*

(G) *Facilities generating electricity from biomass energy shall be considered an in-state renewable electricity generation facility to the extent that they certify to the Energy Commission that fuel utilization is limited to the following:*

(i) *Agricultural crops and agricultural wastes and residues.*

(ii) *Solid waste materials such as waste pallets, crates, dunnage, manufacturing and construction wood wastes, landscape or right-of-way tree trimmings, mill residues that are directly the result of the milling of lumber, and rangeland maintenance residues.*

(iii) *Wood and wood wastes that meet all of the following requirements:*

(I) *Have been harvested pursuant to an approved timber harvest plan prepared in accordance with the Z'berg-Nejedly Forest Practice Act of 1973 (Ch. 8 (commencing with Sec. 4511), Pt. 2, Div. 4, P.R.C.).*

(II) *Have been harvested for the purpose of forest fire fuel reduction or forest stand improvement.*

(III) *Do not transport or cause the transportation of species known to harbor insect or disease nests outside zones of infestation or current quarantine zones, as identified by the Department of Food and Agriculture or the Department of Forestry and Fire Protection, unless approved by the Department of Food and Agriculture and the Department of Forestry and Fire Protection.*

(3) *Production incentives awarded under this subdivision prior to January 1, 2002, shall commence on the date that a project begins electricity production, provided that the project was*

1 *operational prior to January 1, 2002, unless the Energy*  
2 *Commission finds that the project will not be operational prior to*  
3 *January 1, 2002, due to circumstances beyond the control of the*  
4 *developer. Upon making a finding that the project will not be*  
5 *operational due to circumstances beyond the control of the*  
6 *developer, the Energy Commission shall pay production incentives*  
7 *over a five-year period, commencing on the date of operation,*  
8 *provided that the date that a project begins electricity production*  
9 *may not extend beyond January 1, 2007.*

10 ~~(3)~~

11 (4) Repowered ~~wind projects~~ existing facilities shall be eligible  
12 for funding under this subdivision if the ~~new investment is capital~~  
13 ~~investment to repower the existing facility equals~~ at least 80  
14 percent of the value of the repowered facility.

15 ~~(d) (1) Ten percent of the money~~

16 (5) Facilities engaging in the combustion of municipal solid  
17 waste or tires are not eligible for funding under this subdivision.

18 (e) (1) Seventeen and one-half percent of the funds collected  
19 pursuant to paragraph (3) of subdivision (c) of Section 381, ~~up to~~  
20 ~~fifty-four million dollars (\$54,000,000),~~ shall be used for a  
21 multiyear, consumer-based program to foster the development of  
22 emerging renewable technologies in distributed generation  
23 applications. ~~Funds to further the purposes of this subdivision may~~  
24 ~~be committed for multiple years.~~

25 (2) Any funds used for emerging technologies pursuant to this  
26 subdivision shall be expended in accordance with *the report,*  
27 *subject to* all of the following requirements:

28 (A) Funding for emerging technologies shall be provided  
29 through a competitive, market-based process that shall be in place  
30 for a period of not less than ~~four~~ five years, and shall be structured  
31 so as to allow eligible emerging technology manufacturers and  
32 suppliers to anticipate and plan for increased sale and installation  
33 volumes over the life of the program.

34 (B) The program shall provide monetary rebates, buydowns, or  
35 equivalent incentives, subject to subparagraph (C) ~~of paragraph~~  
36 ~~(2) of subdivision (d),~~ to purchasers, lessees, lessors, or sellers of  
37 eligible electricity generating systems. Incentives shall benefit the  
38 end-use consumer of renewable generation by directly and  
39 exclusively reducing the *purchase or lease* cost of the eligible  
40 system, or the cost of electricity produced by the eligible system.

Incentives shall be issued on the basis of the rated electrical generating capacity of the system measured in watts. ~~The amount of the per-watt incentive shall decline over the term of the program, with a corresponding increase in the amount of total electrical capacity eligible for the incentive, thereby encouraging the manufacturers and suppliers of eligible systems to reduce system costs. Incentives shall be limited to a maximum percentage of the system price, as defined by the State Energy Resources Conservation and Development Commission, and the maximum incentive percentage shall decline over the term of the program, as shall the per-watt incentive, in amounts to be determined by the State Energy Resources Conservation and Development Commission, or the amount of electricity production of the system, measured in kilowatthours determined by the Energy Commission.~~

(C) Eligible distributed emerging technologies are photovoltaic, solar thermal electric, fuel cell technologies that utilize renewable fuels, and wind turbines of not more than ~~ten~~ 50 kilowatts rated electrical generating capacity per customer site, ~~provided that the technologies meet the and other distributed renewable emerging technologies that meet the~~ emerging technology eligibility criteria ~~contained in the report prepared by State Energy Resources Conservation and Development Commission established by the Energy Commission.~~ Eligible electricity generating systems are intended primarily to offset part or all of the consumer's own ~~electrical energy~~ electricity demand, and shall not be owned by ~~electrical corporations or local~~ publicly owned electric utilities, ~~nor~~ be located at a customer site that is not receiving distribution service from ~~existing in-state electrical corporations an electrical corporation that is subject to Section 381 and contributing funds to support programs under this section.~~ Not less than 60 percent of the available incentive funds shall be reserved for systems of 10 kilowatts rated electrical capacity or smaller, and not less than 15 percent of the funds shall be reserved for systems of 100 kilowatts rated electrical capacity or smaller. All eligible electricity generating system components shall be new and unused, ~~and~~ shall not have been previously placed in service in any other location or for any other application, ~~and shall have a warranty of not less than five years to protect against defects and undue degradation of electrical generation output.~~ Systems and their fuel resource shall be located on the same premises of the

1 end-use consumer of the electricity produced where the consumers  
2 own electricity demand is located, and all eligible electricity  
3 generating systems shall be connected to the utility grid in  
4 California. *The Energy Commission may require eligible*  
5 *electricity generating systems to have meters in place to monitor*  
6 *and measure a system's performance and generation. Only systems*  
7 *that will be operated in compliance with applicable law and the*  
8 *rules of the commission shall be eligible for funding.*

9 ~~(D) The State Energy Resources Conservation and~~  
10 ~~Development Commission shall also determine, in~~  
11 ~~collaboration with industry and consumer interests, if a program~~  
12 ~~provision limiting the amount of funds available for any single~~  
13 ~~project is warranted, and determine how federal, state, or other~~  
14 ~~funds or incentives not related to this section that are already~~  
15 ~~available, or that may become available for eligible electricity~~  
16 ~~generating systems, may impact the availability of funds allocated~~  
17 ~~under this section, if at all. The emerging renewable technologies~~  
18 ~~program shall be implemented not later than March 31, 1998, and~~  
19 ~~incentives shall be available for eligible electricity generating~~  
20 ~~systems that are placed in service after January 1, 1998, in~~  
21 ~~accordance with the program provisions developed by the State~~  
22 ~~Energy Resources Conservation and Development Commission.~~  
23 ~~However, projects placed in service after January 1, 1998, and~~  
24 ~~prior to September 1, 1998, shall not be subject to limits, if any,~~  
25 ~~that may be determined by the commission, pursuant to this~~  
26 ~~subparagraph limit the amount of funds available for any system~~  
27 ~~or project of multiple systems and reduce the level of funding for~~  
28 ~~any system or project of multiple systems that has received, or may~~  
29 ~~be eligible to receive, any government or utility funds, incentives,~~  
30 ~~or credit.~~

31 ~~(e) Fifteen percent of the money~~

32 (E) *In awarding funding, the Energy Commission may provide*  
33 *preference to systems that provide tangible demonstrable benefits*  
34 *to communities with a plurality of minority or low-income*  
35 *populations.*

36 (F) *In awarding funding, the Energy Commission shall develop*  
37 *and implement eligibility criteria and a system that provides*  
38 *preference to systems based upon system performance, taking into*  
39 *account factors, including, but not limited to, shading, insulation*  
40 *levels, and installation orientation.*



(f) (1) *Ten percent of the funds collected pursuant to paragraph (3) of subdivision (c) of Section 381, ~~up to eighty-one million dollars (\$81,000,000), shall be used for programs designed to provide customer credits for purchases of renewable energy produced by certified energy providers, to disseminate information regarding renewable energy technologies, to promote purchases of renewable energy, to help develop a consumer market for renewable energy, and to help develop a consumer market for renewable energy technologies to provide customer credits to customers that entered into a direct transaction on or before September 20, 2001, for purchases of electricity produced by registered in-state renewable electricity generating facilities.~~*

(2) *Any funds used for customer credits pursuant to this subdivision shall be expended, as provided in the report, subject to the following requirements:*

(1) (A) ~~Fourteen percent of the money, up to seventy-five million six hundred thousand dollars (\$75,600,000), shall be expended to provide customer credits for purchases of renewable energy produced by certified energy providers. Customer-~~

(A) *Customer credits shall be awarded to California retail customers located in the service territory of an ~~investor-owned utility electrical corporation~~ that is subject to Section 381 ~~who purchase qualifying renewable electric power that is contributing funds to support programs under this section, and that is purchasing qualifying electricity from renewable electricity generating facilities~~ through transactions traceable to specific generation sources by any auditable contract trail or equivalent that provides commercial verification that the electricity ~~source~~ ~~claimed has been sold not more than once to a retail customer.~~ Credits may be given without regard to whether the power supplier is also receiving funds under any other subdivision of this section ~~from the claimed renewable electricity generating facilities has been sold once and only once to a retail customer.~~*

(B) *Credits awarded pursuant to this paragraph may be paid directly to ~~electric service providers~~, energy marketers, aggregators, or generators if those persons or entities account for the credits on the recipient customer's ~~utility~~ bills. Credits ~~shall~~ ~~may not exceed one and one-half cents (\$0.015) per kilowatthour.~~ Credits awarded to members of the combined class of customers, other than residential and small commercial customers, ~~shall may~~*

1 not exceed one thousand dollars (\$1,000) per customer in 1998 and  
2 1999 per calendar year. In no event may more than 20 percent of  
3 the total customer incentive funds be awarded to members of the  
4 combined class of customers other than residential and small  
5 commercial customers. Thereafter, the State Energy Resources  
6 Conservation and Development Commission shall determine by  
7 January 10 of each year the average customer incentive rebate  
8 level paid over the preceding calendar year. In the event that the  
9 payments have remained at the one and one-half cents (\$0.015) per  
10 kilowatthour cap over the preceding calendar year, the one  
11 thousand dollars (\$1,000) per customer cap shall be removed for  
12 that calendar year, except that in no event shall more than fifteen  
13 million dollars (\$15,000,000) of the total customer incentive funds  
14 be awarded to members of the combined class of customers other  
15 than residential and small commercial customers.

16 (C) Funding for credits pursuant to this paragraph shall be  
17 increased for each successive year during the period from January  
18 1, 1998, to January 1, 2002, to encourage the increasing use of  
19 those credits. Credits awarded pursuant to this paragraph are  
20 subject to the following additional limitations:

21 (i) No credits shall be awarded for any customer signing  
22 contracts with an electric service provider after September 20,  
23 2001.

24 (ii) Credits may not be awarded for procurement from projects  
25 receiving supplemental energy payments under subdivision (c) of  
26 this section.

27 (D) The State Energy Resources Conservation and  
28 Development Commission shall develop interim criteria and  
29 procedures for the certification of energy providers and for the  
30 identification of energy purchasers who identification of energy  
31 purchasers and providers that are eligible to receive funds  
32 pursuant to this paragraph through a process consistent with this  
33 paragraph. The These criteria and procedures shall apply only to  
34 funding eligibility and shall may not extend to other renewable  
35 marketing claims.

36 (E) The commission shall notify the State Energy Resources  
37 Conservation and Development Commission in writing within 10  
38 days of revoking or suspending the registration of any electric  
39 service provider pursuant to paragraph (4) of subdivision (b) of  
40 Section 394.25.

~~(2)–~~

(F) By March 31, 2003, the Energy Commission shall report to the Governor and the Legislature on how to most effectively utilize the funds for customer credits, including whether, and under what conditions, the program should be continued. The report shall include an examination of trends in markets for renewable energy, including the trading of nonenergy attributes, and the role of customer credits in such markets. The report will recommend an appropriate funding allocation for the customer credits and how implementation of the customer credits should be structured, if appropriate.

(g) One percent of the money, up to five million four hundred thousand dollars (\$5,400,000), funds collected pursuant to paragraph (3) of subdivision (c) of Section 381 shall be expended used in accordance with the report to promote renewable energy and to disseminate information on renewable energy technologies, including emerging renewable technologies, and to help develop a consumer market for renewable energy and for small-scale emerging renewable energy technologies.

~~(f)–~~

(h) (1) The State Energy Resources Conservation and Development Commission shall adopt guidelines governing the funding programs authorized under this section, at a publicly noticed meeting offering all interested parties an opportunity to comment. Substantive changes to the guidelines shall may not be adopted without at least 10 days' written notice to the public. The public notice of meetings required by this paragraph shall may not be less than 30 days. Notwithstanding any other provision of law, any guidelines adopted pursuant to this section shall be deemed to satisfy exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code. The Legislature declares that the changes made to this paragraph by the act amending this section during the 2002 portion of the 2001–02 Regular Session are declaratory of, and not a change in, existing law.

(2) The State Energy Resources Conservation and Development Commission shall, in collaboration with eligible emerging technology industry stakeholders and consumer interests, complete the emerging technology program design, as outlined in subdivision (d), and implement its provisions. Funds

1 *to further the purposes of this section may be committed for*  
2 *multiple years.*

3 (3) Awards made pursuant to this section are grants, subject to  
4 appeal to the ~~State Energy Resources Conservation and~~  
5 ~~Development~~ Commission upon a showing that factors other than  
6 those described in the guidelines adopted by the ~~State Energy~~  
7 ~~Resources Conservation and Development~~ Commission were  
8 applied in making the awards and payments. Any actions taken by  
9 an applicant to apply for, or become or remain eligible and  
10 ~~certified~~ *registered* to receive, payments or awards, including  
11 satisfying conditions specified by the ~~State Energy Resources~~  
12 ~~Conservation and Development~~ Commission, shall not constitute  
13 the rendering of goods, services, or a direct benefit to the ~~State~~  
14 ~~Energy Resources Conservation and Development~~ Commission.

15 ~~(g)–~~

16 (i) The ~~State Energy Resources Conservation and~~  
17 ~~Development~~ Commission shall report to the Legislature on or  
18 before May 31, 2000, and on or before May 31 of every second  
19 year thereafter, regarding the results of the mechanisms funded  
20 pursuant to this section. Reports prepared pursuant to this section  
21 shall include a description of the allocation of funds among  
22 existing, new and emerging technologies; the allocation of funds  
23 among programs, including consumer-side incentives; and the  
24 need for the reallocation of money among those technologies. *The*  
25 *reports shall discuss the progress being made toward achieving the*  
26 *17 percent target provided in subdivision (a) by each funding*  
27 *category authorized pursuant to subdivisions (c), (d), (e), (f), and*  
28 *(g) of this section.* The reports shall also address the allocation of  
29 funds from interest on the accounts described in this section, *and*  
30 money in the accounts described in subdivision (e) of Section 381;  
31 ~~and money included in the accounts pursuant to Section 385.~~  
32 ~~Notwithstanding paragraph (4) of subdivision (b) of Section 383~~  
33 ~~or subdivisions (b), (c), (d), and (e), (f), and (g) of this section,~~  
34 money may be reallocated without further legislative action  
35 among existing, new, and emerging technologies and  
36 consumer-side programs in a manner consistent with the report  
37 *and with the latest report provided to the Legislature pursuant to*  
38 *this subdivision, except that reallocations may not reduce the*  
39 *allocation established in subdivision (d) nor increase the*  
40 *allocation established in subdivision (c).*

(j) *The Energy Commission shall, by December 1, 2003, prepare and submit to the Legislature a comprehensive renewable electricity generation resource plan that describes the renewable resource potential available in California, and recommendations for a plan for development to achieve the target of increasing the amount of electricity generated from renewable sources per year, so that it equals 17 percent of the total electricity generated for consumption in California by 2006. The Energy Commission shall consult with the commission, electrical corporations, and the Independent System Operator, in the development and preparation of the plan.*

(k) *The Energy Commission shall participate in proceedings at the commission that relate to or affect efforts to stimulate the development of electricity generated from renewable sources, in order to obtain coordination of the state's efforts to achieve the target of increasing the amount of electricity generated from renewable sources per year, so that it equals 17 percent of the total electricity generated for consumption in California by 2006.*

(l) *The Energy Commission may expend up to 1 percent of the funds collected pursuant to paragraph (3) of subdivision (c) of Section 381 for any of its costs of implementing and administering Article 16 (commencing with Section 399.11).*

SEC. 3. *Section 387 is added to the Public Utilities Code, to read:*

387. (a) *Each governing body of a local publicly owned electric utility, as defined in Section 9604, shall be responsible for implementing and enforcing the renewables portfolio standard consistent with Article 16 (commencing with Section 399.11).*

(b) *Each local publicly owned electric utility shall report, on an annual basis, to the State Energy Resources Conservation and Development Commission, the following:*

(1) *Expenditures of public goods funds collected pursuant to Section 385 for renewable energy resource development. Reports shall contain a description of programs, expenditures and expected or actual results.*

(2) *The resource mix used to serve its customers by fuel type. Reports shall contain the contribution of each type of renewable energy resource with separate categories for those fuels considered eligible renewable energy resources as defined by Section 399.12.*

1     *SEC. 4. Section 390 of the Public Utilities Code is amended*  
2     *to read:*

3     390. (a) Subject to applicable contractual terms, energy  
4     prices paid to nonutility power generators by a public utility  
5     electrical corporation based upon the commission's prescribed  
6     "short run avoided cost energy methodology" shall be determined  
7     as set forth in subdivisions (b) and (c).

8     (b) Until the requirements of subdivision (c) have been  
9     satisfied, short run avoided cost energy payments paid to  
10    nonutility power generators by an electrical corporation shall be  
11    based on a formula that reflects a starting energy price, adjusted  
12    monthly to reflect changes in a starting gas index price in relation  
13    to an average of current California natural gas border price indices.  
14    The starting energy price shall be based on 12-month averages of  
15    recent, pre-January 1, 1996, short-run avoided energy prices paid  
16    by each public utility electrical corporation to nonutility power  
17    generators. The starting gas index price shall be established as an  
18    average of index gas prices for the same annual periods.

19    (c) The short-run avoided cost energy payments paid to  
20    nonutility power generators by electrical corporations shall be  
21    based on the clearing price paid by the independent Power  
22    Exchange if (1) the commission has issued an order determining  
23    that the independent Power Exchange is functioning properly for  
24    the purposes of determining the short-run avoided cost energy  
25    payments to be made to nonutility power generators, and either (2)  
26    the fossil-fired generation units owned, directly or indirectly, by  
27    the public utility electrical corporation are authorized to charge  
28    market-based rates and the "going forward" costs of those units  
29    are being recovered solely through the clearing prices paid by the  
30    independent Power Exchange or from contracts with the  
31    Independent System Operator, whether those contracts are  
32    market-based or based on operating costs for particular  
33    utility-owned powerplant units and at particular times when  
34    reactive power/voltage support is not yet procurable at  
35    market-based rates at locations where it is needed, and are not  
36    being recovered directly or indirectly through any other source, or  
37    (3) the public utility electrical corporation has divested 90 percent  
38    of its gas-fired generation facilities that were operated to meet load  
39    in 1994 and 1995. However, nonutility power generators subject  
40    to this section may, upon appropriate notice to the public utility



1 electrical corporation, exercise a one-time option to elect to  
2 thereafter receive energy payments based upon the clearing price  
3 from the independent Power Exchange.

4 (d) If a nonutility power generator is being paid short-run  
5 avoided costs energy payments by an electrical corporation by a  
6 firm capacity contract, a forecast as-available capacity contract, or  
7 a forecast as-delivered capacity contract on the basis of the  
8 clearing price paid by the independent Power Exchange as  
9 described in subdivision (c) above, the value of capacity in the  
10 clearing price, if any, shall not be paid to the nonutility power  
11 generator. The value of capacity in the clearing price, if any, equals  
12 the difference between the market clearing customer demand bid  
13 at the level of generation dispatched by the independent Power  
14 Exchange and the highest supplier bid dispatched.

15 (e) Short-run avoided energy cost payments made pursuant to  
16 this section are in addition to contractually specified capacity  
17 payments. Nothing in this section shall be construed to affect,  
18 modify or amend the terms and conditions of existing nonutility  
19 power generators' contracts with respect to the sale of energy or  
20 capacity or otherwise.

21 (f) Nothing in this section shall be construed to limit the level  
22 of transition cost recovery provided to utilities under electric  
23 industry restructuring policies established by the commission.

24 (g) The term "going forward costs" shall include, but not be  
25 limited to, all costs associated with fuel transportation and fuel  
26 supply, administrative and general, and operation and  
27 maintenance; provided that, for purposes of this section, the  
28 following shall not be considered "going forward costs": (1)  
29 commission-approved capital costs for capital additions to  
30 fossil-fueled powerplants, provided that such additions are  
31 necessary for the continued operation of the powerplants utilized  
32 to meet load and such additions are not undertaken primarily to  
33 expand, repower or enhance the efficiency of plant operations; or,  
34 (2) commission-approved operating costs for particular  
35 utility-owned powerplant units and at particular times when  
36 reactive power/voltage support is not yet procurable at  
37 market-based rates in locations where it is needed, provided that  
38 the recovery shall end on December 31, 2001.

39 (h) *Any nonutility power generator using renewable fuels that*  
40 *has entered into a contract with an electrical corporation prior to*

1 *December 31, 2001, specifying fixed energy prices for five years*  
2 *of output may elect an additional five years of fixed energy*  
3 *payments, upon expiration of the initial five year term, at a price*  
4 *to be determined by the commission.*

5 *SEC. 5. Article 16 (commencing with Section 399.11) is added*  
6 *to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code,*  
7 *to read:*

8  
9 *Article 16. California Renewables Portfolio Standard*  
10 *Program*

11  
12 *399.11. The Legislature finds and declares all of the*  
13 *following:*

14 *(a) In order to attain a target of 20 percent renewable energy*  
15 *for the State of California and for the purposes of increasing the*  
16 *diversity, reliability, public health and environmental benefits of*  
17 *the energy mix, it is the intent of the Legislature that the California*  
18 *Public Utilities Commission and the State Energy Resources*  
19 *Conservation and Development Commission implement the*  
20 *California Renewables Portfolio Standard Program described in*  
21 *this article.*

22 *(b) Increasing California's reliance on renewable energy*  
23 *resources will promote stable electricity prices, protect public*  
24 *health, improve environmental quality, stimulate sustainable*  
25 *economic development, create new employment opportunities,*  
26 *and reduce reliance on imported fuels.*

27 *(c) The development of renewable energy resources will*  
28 *ameliorate air quality problems throughout the state and improve*  
29 *public health by reducing the burning of fossil fuels and the*  
30 *associated environmental impacts.*

31 *(d) Uncontrolled natural gas prices have the potential to cause*  
32 *serious economic damage to the State of California and measures*  
33 *must be taken to avoid overreliance on any one fuel for future*  
34 *electric generation needs.*

35 *(e) The enactment of a renewables portfolio standard will*  
36 *benefit low-income communities and communities of color that*  
37 *experience disproportionate impacts from air pollution caused by*  
38 *electric generating facilities that burn fossil fuels. The Legislature*  
39 *intends that these communities shall receive economic and*

environmental benefits associated with the siting of renewable generation.

(f) The California Renewables Portfolio Standard is intended to complement the Renewable Energy Program administered by the State Energy Resources Conservation and Development Commission and established pursuant to Sections 383.5 and 445.

399.12. For purposes of this article, the following terms have the following meanings:

(a) “Eligible renewable energy resource” means an electric generating facility that is one of the following:

(1) The facility is certified by the State Energy Resources Conservation and Development Commission as eligible to receive funding from programs authorized under Section 383.5.

(2) The facility is a geothermal, digester gas or landfill gas generation technology that, as of December 30, 2001, sold its output to a California electrical corporation under a long-term contract entered into pursuant to the federal Public Utility Regulatory Policies Act of 1978 (Public Law 95-617).

(3) A geothermal generation facility that was divested by a California electrical corporation or local publicly owned electric utility at any time prior to January 1, 2002, and whose output is purchased by any California electrical corporation. Output from these facilities shall be eligible only for the purpose of adjusting a retail seller’s baseline quantity of eligible renewable energy resources, except for that output that satisfies subparagraph (C) of paragraph (1) of subdivision (c) of Section 399.6. All such facilities owned by the same entity and that use the same steamfield shall be considered a single facility for purposes of determining if the output satisfies subparagraph (C) of paragraph (1) of subdivision (c) of Section 399.6.

(b) “Retail seller” means an entity engaged in the retail sale of electricity to end-use customers, including any of the following:

(1) An electrical corporation, as defined in Section 218.

(2) A community choice aggregator.

(3) A local publicly owned electric utility as defined by subdivision (d) of Section 9604. A local publicly owned electric utility as defined by subdivision (d) of Section 9604 shall be subject only to Section 387 for purposes of compliance with the renewables portfolio standard obligation.

1 (4) *An electric service provider, as defined in Section 218.3*  
2 *subject to the following conditions:*

3 (A) *An electric service provider shall be considered a retail*  
4 *seller under this article for sales to any customer acquiring service*  
5 *after January 1, 2003.*

6 (B) *An electric service provider shall be considered a retail*  
7 *seller under this article for sales to all its customers beginning on*  
8 *January 1, 2005.*

9 (5) *“Retail seller” does not include either of the following:*

10 (A) *Self-generation serving customer load, consistent with*  
11 *subdivision (b) of Section 218.*

12 (B) *The Department of Water Resources acting in its capacity*  
13 *pursuant to Division 27 (commencing with Section 80000) of the*  
14 *Water Code.*

15 (c) *“Renewables portfolio standard” means the specified*  
16 *percentage of electricity generated by eligible renewable energy*  
17 *resources that a retail seller is required to procure in any given*  
18 *year, as established pursuant to Sections 399.13 and 399.15.*

19 (d) *“Commission” means the Public Utilities Commission.*

20 (e) *“Energy Commission” means the State Energy Resources*  
21 *Conservation and Development Commission.*

22 399.13. *The Energy Commission shall do all of the following:*

23 (a) *Certify eligible renewable energy resources that it*  
24 *determines meet the criteria described in subdivision (a) of Section*  
25 *399.12.*

26 (b) *Design and implement an accounting system to verify*  
27 *compliance with the renewables portfolio standard by retail*  
28 *sellers, to ensure that renewable energy output is counted only*  
29 *once for the purpose of meeting the renewables portfolio standard*  
30 *of this state or any other state, and for verifying retail product*  
31 *claims in this state or any other state. In establishing the guidelines*  
32 *governing this system, the Energy Commission shall collect data*  
33 *from electricity market participants that the Energy Commission*  
34 *deems necessary to verify compliance of retail sellers, in*  
35 *accordance with the requirements of this article and the California*  
36 *Public Records Act (Chapter 3.5 (commencing with Section 6250)*  
37 *of Division 7 of Title 1 of the Government Code). In seeking data*  
38 *from electrical corporations, the Energy Commission shall request*  
39 *data from the commission. The commission shall collect data from*

1 *electrical corporations and remit the data to the Energy*  
2 *Commission within 90 days of the request.*

3 *(c) Allocate and award supplemental energy payments*  
4 *pursuant to subdivision (d) of Section 383.5 to eligible renewable*  
5 *energy resources to reduce the cost of compliance with the*  
6 *renewables portfolio standard by electrical corporations and*  
7 *electric service providers.*

8 *(d) The Energy Commission shall consult with the commission*  
9 *prior to establishing rules for compliance by retail sellers other*  
10 *than electrical corporations and rules governing the awarding of*  
11 *supplemental energy payments to all retail sellers. The Energy*  
12 *Commission shall adopt guidelines governing the programs*  
13 *authorized under this section at a publicly noticed meeting*  
14 *offering all interested parties an opportunity to comment.*  
15 *Substantive changes to the guidelines may not be adopted without*  
16 *at least 10 days' written notice to the public. The public notice of*  
17 *meetings required by this paragraph may not be less than 30 days.*  
18 *Notwithstanding any other provision of law, any guidelines*  
19 *adopted pursuant to this section shall be exempt from the*  
20 *requirements of Chapter 3.5 (commencing with Section 11340) of*  
21 *Part 1 of Division 3 of Title 2 of the Government Code.*

22 *399.14. The Energy Commission shall enforce and monitor*  
23 *compliance with the renewables portfolio standard by retail sellers*  
24 *other than electrical corporations and local publicly owned*  
25 *electric utilities. In enforcing compliance, the Energy Commission*  
26 *shall do all of the following:*

27 *(a) Ensure that electric service providers, as defined in Section*  
28 *218.3, procure a minimum percentage of renewable energy*  
29 *resources for every customer served, located in the service*  
30 *territory of an electrical corporation. In any given year, the*  
31 *minimum percentage shall be equivalent to the difference between*  
32 *the annual portfolio standard for the electrical corporation*  
33 *serving the customer's geographic region and the percentage*  
34 *represented by the share of eligible renewable energy resources*  
35 *supported by the customer through nonbypassable charges*  
36 *assessed pursuant to paragraph (2) of subdivision (a) of Section*  
37 *367.*

38 *(b) Ensure that retail sellers other than electric service*  
39 *providers and electrical corporations procure a minimum*  
40 *percentage of renewable energy resources for every customer*

1 served. The Energy Commission shall determine an initial  
2 baseline and annual obligation for these retail sellers in a manner  
3 consistent with the initial baselines and annual obligations  
4 established for electrical corporations in Section 399.15.

5 (c) Establish flexible rules for compliance by retail sellers  
6 other than electrical corporations including, but not limited to, the  
7 banking of excess compliance by permitting retail sellers to apply  
8 overcompliance in one year to no more than the following three  
9 years. The Energy Commission may allow retail sellers other than  
10 electrical corporations to receive credit for any early procurement  
11 of eligible renewable energy resources prior to the first date of  
12 compliance required under the renewables portfolio standard.

13 (d) Award supplemental energy payments pursuant to  
14 subdivision (d) of Section 383.5 to eligible renewable energy  
15 resources to reduce the cost of compliance by retail sellers other  
16 than electrical corporations and local publicly owned electric  
17 utilities. The Energy Commission shall allocate sufficient funds to  
18 ensure the availability of supplemental energy payments for  
19 eligible renewable energy resources contracting with electric  
20 service providers and community aggregators.

21 (e) If supplemental energy payments from the Energy  
22 Commission are insufficient to cover above-market renewable  
23 procurement costs, the Energy Commission shall allow retail  
24 sellers other than electrical corporations to limit their annual  
25 procurement obligations to the quantity of eligible renewable  
26 energy resources that can be procured with available supplemental  
27 energy payments. Assess and collect penalties on any retail seller  
28 that is not an electrical corporation and fails to comply with this  
29 article. Penalties shall be set at a level sufficient to ensure  
30 compliance, as determined by the Energy Commission.

31 399.15. (a) In order to fulfill unmet long-term resource  
32 needs, the commission shall establish a renewables portfolio  
33 standard requiring all electrical corporations to procure a  
34 minimum quantity of output from eligible renewable energy  
35 resources as a specified percentage of total kilowatthours sold to  
36 their retail end-use customers each calendar year, subject to all of  
37 the following:

38 (1) An electric corporation shall not be required to make  
39 payments to eligible renewable energy resources for contracts  
40 approved by the commission pursuant to subdivision (c) of Section



333 that exceed the market prices established pursuant to subdivision (c) of this section.

(2) The Energy Commission shall provide supplemental energy payments from funds in the New Renewable Resources Account in the Renewable Resource Trust Fund to eligible renewable energy resources pursuant to Section 383.5, for costs approved by the commission that exceed market prices. Indirect costs associated with the purchase of eligible renewable energy resources, such as imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades shall not be eligible for supplemental energy payments.

(3) For purposes of setting annual purchase targets, the commission shall establish an initial baseline for each electrical corporation based on the actual percentage of retail sales procured from eligible renewable energy resources in 2001, and, to the extent applicable, adjusted going forward pursuant to paragraph (3) of subdivision (a) of Section 399.12.

(b) The commission shall implement annual purchase targets for each electrical corporation as follows:

(1) Beginning on January 1, 2003, each electrical corporation shall increase its total procurement of eligible renewable energy resources by at least an additional 1 percent of retail sales per year so that at least 20 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, 2015. An electrical corporation with at least 20 percent of retail sales procured from eligible renewable energy resources in any year shall not be required to increase its procurement of such resources in the following year.

(2) Only for purposes of establishing these targets, the commission shall include all power sold to retail customers by the Department of Water Resources pursuant to Section 80100 of the Water Code in the calculation of retail sales by an electrical corporation.

(3) In the event that an electrical corporation fails to procure sufficient eligible renewable energy resources in a given year to meet any annual target established pursuant to this subdivision, the electrical corporation shall procure additional eligible renewable energy resources in subsequent years to compensate for the shortfall.

1 (4) If supplemental energy payments from the Energy  
2 Commission, in combination with the market prices approved by  
3 the commission, are insufficient to cover the total energy payments  
4 for approved contracts with eligible renewable energy resources,  
5 the commission shall allow an electrical corporation to limit its  
6 annual procurement obligation to the quantity of eligible  
7 renewable energy resources that can be procured with available  
8 supplemental energy payments.

9 (c) The commission shall establish a methodology to determine  
10 the market price of electricity for terms corresponding to the length  
11 of contracts with renewable generators, in consideration of the  
12 following:

13 (1) The long-term market price of electricity for fixed price  
14 contracts, determined pursuant to the electrical corporation's  
15 procurement activities as set forth in Section 333 and this article.

16 (2) The long-term ownership, operating, and fixed-price fuel  
17 costs associated with fixed-price electricity from new generating  
18 facilities, and any consumer benefits resulting from reduced  
19 demand for natural gas, to the extent these benefits are not already  
20 reflected in the long-term costs of electricity.

21 (3) The value of different products including baseload, peaking  
22 and as-available output.

23 (d) The establishment of a renewables portfolio standard shall  
24 not constitute implementation by the commission of the federal  
25 Public Utility Regulatory Policies Act of 1978 (Public Law  
26 95-617). The commission shall continue to implement any federal  
27 requirements pursuant to Section 390.

28 (e) The commission shall consult with the Energy Commission  
29 in calculating market prices under subdivision (c) and  
30 establishing other renewables portfolio standard policies.

31 SEC. 6. Section 399.25 is added to the Public Utilities Code,  
32 immediately following Section 399.2, to read:

33 399.25. (a) Notwithstanding any other provision in Sections  
34 1001 to 1013, inclusive, an application of an electric corporation  
35 for a certificate authorizing the construction of new transmission  
36 facilities shall be deemed to be necessary to the provision of  
37 electric service for purposes of any determination made under  
38 Section 1003 if the commission finds that the new facility is  
39 necessary to facilitate achievement of the renewable power goals  
40 established in Article 16 (commencing with Section 399.11).

(b) With respect to a transmission facility described in subdivision (a) of this section, the commission shall take all feasible actions to ensure that the transmission rates established by the Federal Energy Regulatory Commission do not discriminate against a renewable generator and are fully reflected in any retail rates established by the commission. These actions shall include but are not limited to:

(1) Making findings, where supported by an evidentiary record, that transmission facilities built to accommodate such generators provide benefit to the transmission network and are necessary to facilitate the achievement of the renewables portfolio standard established in Article 16 (commencing with Section 399.11).

(2) Directing the utility to which the generator will be interconnected, where the direction is not preempted by federal law, to seek the recovery through general transmission rates of the costs associated with transmission facilities built to accommodate such generators.

(3) Asserting the positions described in paragraphs (1) and (2) to the Federal Energy Regulatory Commission in appropriate proceedings.

(4) Allowing recovery in retail rates of any increase in transmission costs incurred by an electrical corporation resulting from the construction of the transmission facilities that are not approved for recovery in transmission rates by the Federal Energy Regulatory Commission after the commission determines that the costs were prudently incurred in accordance with subdivision (a) of Section 454.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made

1 *pursuant to Part 7 (commencing with Section 17500) of Division*  
2 *4 of Title 2 of the Government Code. If the statewide cost of the*  
3 *claim for reimbursement does not exceed one million dollars*  
4 *(\$1,000,000), reimbursement shall be made from the State*  
5 *Mandates Claims Fund.*

